

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator by)	
)	
Owensboro Public Schools)	File No. SLD-241629
Owensboro, Kentucky)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 13, 2005

Released: April 13, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Owensboro Public Schools, Owensboro, Kentucky (Owensboro), seeking review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ In the alternative, Owensboro requests a waiver of the Commission's rules.² Consistent with precedent, we deny the Request for Review. We also deny the request for waiver.

2. The SLD decision at issue in the Request for Review involves denial of funding on the grounds that Owensboro filed its Funding Year 2001 FCC Form 471 application after the close of the filing window deadline. In the Request for Review, Owensboro asserts that its FCC Form 471 application was postmarked by the January 18, 2001 filing window deadline.³ Based on the evidence presented, we

¹Letter from Larry Vick, Owensboro Public Schools, to Federal Communications Commission, filed June 11, 2003 (Request for Review). Any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

²47 C.F.R. § 1.3.

³The deadline for Funding Year 2001 applications was January 18, 2001. See SLD website, www.sl.universalservice.org/whatsnew/2004/112004.asp#110504. The envelope received by SLD containing Owensboro's application was date stamped January 19, 2001. SLD therefore rejected Owensboro's application as untimely. Owensboro appealed SLD's decision and during its review of Owensboro's appeal, SLD asked Owensboro to provide either a tracking document or a letter from the U.S. Postal Service that would clarify the date that the application was mailed. Owensboro was unable to provide the evidence requested by USAC. Instead, as evidence that it timely filed its application, Owensboro provided: (1) a copy of its United States Postal Service certified mail receipt, which contains an illegible date stamp; (2) a copy of a letter from its mailing service, Packages Plus, stating that a letter was presented to Packages Plus from Owensboro on January 18, 2001 and was processed that same day; and (3) an affidavit of the district representative who mailed the application, stating that representative delivered the application to Packages Plus on January 18, 2001 and received a date-stamped receipt that was damaged by clear tape that was used to preserve the date stamp.³ Owensboro submitted the same evidence in the instant Request for Review.

find that Owensboro has failed to prove that its application was filed before the close of the filing window deadline.

3. Commission's rules allow the Administrator to implement an initial filing period for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁴ We have strictly and consistently enforced the filing window deadlines for FCC Form 471 applications.⁵ The Commission has, however, provided applicants the opportunity to provide proof of postmark and granted requests for review by applicants who were able to provide documentation that their applications were postmarked by the filing deadline.⁶ In this case, Owensboro has presented its postmark evidence, but has failed to provide any documentation showing that its application was postmarked before January 19, 2001 (the date stamped on the envelope received by SLD). We therefore conclude that Owensboro's FCC Form 471 application was filed outside of the window, and thus deny its Request for Review.

4. We also deny Owensboro's request to waive our rules. Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule.⁷ We find that Owensboro has not demonstrated special circumstances to warrant waiver.

5. The Commission has strictly enforced filing deadlines, allowing waivers of deadlines only in very limited and compelling situations.⁸ In light of the large number of applications that SLD

⁴Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules. 47 C.F.R. § 54.507(c) and (g).

⁵See e.g., *Request for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 7383, 7389, para. 13 (Wireline Comp. Bur. 2002); *Request for Review by Wilmington Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-254818, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 12069 (Wireline Comp. Bur. 2002); *Request for Review by South Barber Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 18435 (Com. Car. Bur. 2001).

⁶See *Request for Waiver by Sacramento City Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-242477, Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 21272 (Com. Car. Bur. 2001); *Request for Waiver by Alpine County Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of the National Exchange Carrier Association, Inc.*, File No. NEC. 471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 1718, 1721, para. 7 (Com. Car. Bur. 2002); *Request for Review by Jaffrey-Ringe Cooperative School, Federal-State Joint Board on Universal Service, Change to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-257632, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 9475, 9476-77, para. 4 (Wireline Comp. Bur. 2002).

⁷47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸See *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879, 15880-81, paras. 4-5 (Com. Car. Bur. 2001). See also *Petitions for Waiver or Reconsideration of Sections 54.706, 54.709, and/or 54.711 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, 15 FCC Rcd 20769, 20783, para 28 (1999).

reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures, including filing deadlines.⁹ Further, the assertion that denial of an application may have a detrimental impact on an applicant does not create special circumstances or suggest particular facts that warrant a waiver of the Commission's rules.¹⁰ In keeping with our prior decisions, we determine that Owensboro has not demonstrated the special circumstances necessary for a waiver of our rules.

⁹See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-13, para. 8 (Com. Car. Bur. 2000) ("In light of the thousands of applications that SLD reviews and process each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

¹⁰*Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521, 21528, para. 18 (2003).

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Owensboro Public Schools, Owensboro, Kentucky, on June 11, 2003, IS DENIED and the request to waive the filing deadline for filing a FCC Form 471 application IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau